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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th April 2011

No. 3641—I.D.-59/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th February 2011 in Industrial Dispute Case No. 8 /2010 of the Presiding Officer, Labour Court, Sambalpur, to whom the industrial dispute between the Management of M/s Aryan Ispat & Power (P) Ltd., At Bomaloi, Sambalpur and its Workman Shri Sunil Kumar Mahakud was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 8 OF 2010

Dated the 24th February 2011

Present :

Miss Sarojini Mahapatra, M.A., LLB.,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

The Management of M/s Aryan Ispat & Power Pvt. Ltd., Bomaloi, Sambalpur, Dist. Sambalpur.	.. First Party—Management
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And

Its Workman Shri Sunil Kumar Mahakud, S/o Pratap Kumar Mahakud, Vill. Chamanda, P.O. Chinimahul, Via/P.S. Jamankira, Dist. Sambalpur.	.. Second Party—Workman
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Appearances :

Shri Mahabir Mishra Auth. Representative.	.. For the First Party—Management
Self	.. For the Second Party—Workman

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour & Employment Department conferred by sub-section (5) of Section 12 read with Clause (c) of sub-Section (1) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) in Memo. No. 3870 (5), dated the 12th May 2010 for adjudication of the schedule questions :-

“Whether the termination of service of Shri Sunil Kumar Mahakud, Hydra Operator with effect from 29th June 2008 by the management of M/s Aryan Ispat & Power Pvt. Ltd., Bomaloi, P.O. Lapanga, Dist. Sambalpur by way of refusal of employment is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the second party-workman is stated as follows :—

The second party -workman Shri Sunil Kumar Mahakud, was appointed as Hydra Operator in the management Company with effect from 19-7-2005 with monthly wages of Rs. 5,500 vide letter No. 1261-AIPPL/RECT/05, Dt.7-8-2005. While working in the Management Company, on 29-6-2008. All on a sudden the Security Personnel disputed in the main gate of the company did not allow the second party-workman to enter inside the Company premises for work and told the second party-workman that he was instructed by the management not to allow the second party-workman inside the company premises as the second party-workman has been terminated from his service. The second party-workmen became surprised on the action of the management and desired to talk with the management regarding reason of refusal of his service. But he was not allowed to talk with the management. On 3-11-2008 the second party -workman sent a registered notice on Dt. 30-10-2008 to the Director of the Management Company through his advocate requesting the management to allow the second party-workman to work in the Comany premises. The management did not pay any heed towards the letter of the workman. The refusal of employment to the second party-workman amounted to retrenchment without adopting the provisions of law and the action of the management is illegal, void and not maintainable. The Management has illegally terminated the services of the second party- workman. In view of the fact that the management Comany was forcing the second party-workman to do overtime and as per the records there was a due of Rs. 2,07,321.92 paise of the second party-workman who had worked for 3952 hours overtime for the Management Company and when the second party-workman demanded the said amount, he was refused employment by the management. Besides that he has not received any back wages for his work on 235 sundays and Government holidays amounting to Rs. 99,376 from the Management.

So, the second party-workman made a prayer for an order directing the first party management to take back the present workman into his service and pay the overtime wages amounting to Rs. 2,07,321.92 paise and Rs. 99.376 towards the wages for the workman the sundays and Government Holidays and to pay the full back wages during the period of illegal termination and for other reliefs.

3. The Management has filed the written statement and as per the case of the management the Aryan Ispat power pvt. Ltd., is a private Limited Company incorporated under the Companies Act, 1955 registered office at Ainthapali, Sambalpur. The management is having a factory at Bomalo. The second party -workmen was employed in the organisation of the first party management as Hydra Operator with effect from 19-7-2005. As per the case of the first party management the second party- workman was irregular in his duty and without say information or leave application he was absenting from his duty. The management did not take it seriously. But since 29-6-2008, he did not turn up for duty without any information even did not communicate to the management regarding his absence over phone. So, the plea taken by the second party -workman is false and concocted. The management never instructed any guard not to allow the second party-workman to enter inside the Company premises. The second party -workman left the job voluntarilly as he wanted to engage himself elsewhere for better remuneration.

The second party -workman was never asked to work on public holidays or on sundays nor to work overtime in the working premises of the management.

4. Although the second party-workman was engaged in the Company with effect from 19-7-2005, he was irregular in his duties and was remaining absent continuously. The second party workman was directed to join in duty which was communicated to him on 12-8-2008 but there was no response from the side of the second party-workman. So he was issued show cause notice on Dt. 20-10-2008 for his long absence from duty but the second party-workman never turned up nor any reply was received by the management from him. The management did not stop his duty and requested him to join in his duty through a letter Dt. 12-8-2008. The management has paid all his dues and there is no dues pending against the managemnet. As alleged the first party management is ready to engage the second party-workman in his work but with a positive attitude to work in the company premises. Hence the management made a prayer for dismissal of the case.

5. Rejoinder filed by the second party-workman denying the plea of the management.

6. Out of the pleadings of the parties the following issues have been framed for adjudication :

ISSUES

- (i) "Whether the termination of services of Shri Sunil Kumar Mahakud Hydra Operator with effect from 29-6-2008 by the management of M/s Aryan Ispat & Power Pvt., Ltd., Bomalo, P.O. Lapanga, Dist Sambalpur by way of refusal of employment is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?"

7. Both the parties have filed documents in support of their respective cases. On behalf of the first party management Shri Mahabir Mishra is examined as M.W.1. On behalf of the second party workman, the second party-workman Sunil Kumar Mahakud himself is examined as W.W.1.

FINDINGS

8. *Issue No. (i) :* Admittedly; the second party-workman was appointed as Hydra Operator with effect from 19-7-2005 in M/s Aryan Ispat & Power Pvt. Ltd., Bomalo in incorporated under the Indian Company Act, Admittedly, he was getting his monthly salary of Rs. 5,500 from the first party management. M/s Aryan Ispat & Power Pvt. Ltd., is a private Limited Company in incorporated under the companies Act, 1956 is registered one situated at Ainthapali, Sambalpur. The managemnet is having a factory at Bomalo.

9. As per the case of the second party -workman, he was working as Hydra Operator in the management with all sincerity, honesty and no stigma nor any previous allegations made against him by the management. As per the case of the first party management the workman was very irregular in his duty and without any information or leave application he was absent for many days in his duty. He has not obtained any permission from any authority of the management nor filed any leave application for his absent period. However, the management did not take it seriously. Since 29-6-2008, the second party-workman did not turn up for his duty and without any information he was absent nor communicated to any authority over phone. It is clear from the evidence of W.W.1 that on 29-6-2008 the security personnel of the first party management deputed at the main gate did not allow the second party- workman to enter inside the company premises to join in his duty and told the second party workman that his service has been terminated. Subsequently the second party -workman came to know that as per the instruction of the Senior Manager (P & A) of the Company he was refused his employment. The first party management denied all the above facts. As per the evidence of M.W.1 the second party -workman voluntarily left the job and he did not turn up to his work since the date of 29-6-2008. The facts remain that the second party-workman being engaged by the Company was working as Hydar Operator since 19-7-2005. As alleged from the evidence of M.W.1 that the second party-workman was directed to join in his duty which was communicated to him on 12-8-2008 but the second party-workman did not turn up. On 20-10-2008 a show casuse notice was issued for his long absence from duty but the second party-workman neither turned up nor any reply was received from him. The management opined that the management requested the second party -workman to join in his duty immediately through a letter Dt. 12-8-2008. But the second party -workman did not trun up to his working place. M.W.1 only files some xerox copies of attendance registers from which it is clear that Sunil Kumar Mahakud the second party -workman present in his duty place as well as sometimes he was absent. there is no such copy of document filed by the management in support of the above places which has been taken by the management denying the case of the second party -workman. However, M.W.1 being the liaisoning officer of the management clearly stated in his evidence that the management is agree to engage the second party -workman but with positive attitude and workman's spirit.

10. However the workman has filed some documents such as Ext.W1 is the xerox copy of advocate's notice Dt. 30-10-2008. Ext.W. 2 is the xerox copy of gate pass. Ext.W.3 is the xerox copy of postal acknowledgment. Ext.W.3/a is the xerox copy of postal service. ExtW.4 is the xerox copy of log Book (sixty three sheets). Admittedly, there is no such copy of letter of retrenchment order filed by either party issued by the first party management terminating the second party-workman from his job. So, it is specific evidence of W.W.1 that on 29-6-2008 the security

personnel of the first party management deputed at main gate did not allow the second party workman to enter inside the company premises to join in his duty and told him that his service has been terminated. Subsequently, the second party workman came to know that as per the instruction of the senior manager (P & A) of the company he was refused his employment. So there is nothing to disbelieve on this above facts as the first party management has not filed any relevant documents in support of its case. However, the management is ready to engage the second party- workman in his job. Although the second party -workman claims his back wages such as for overtime dues and remuneration for his work on sundays and holidays etc., but the workman has not clearly proved the same basing on the document. There is no document filed by the second party -workman towards his claim of back wages from the management. In the facts and circumstances it can safely be concluded that the termination of services of Shri Sunil Kumar Mahakud, Hydar Operator with effect from 29-6-2008 by the management of M/s Aryan Ispat & Power pvt. Ltd. Bomalo, P.O. Lapanga. Dist. Sambalpur by way of refusal of employment is illegal and unjustified. According, the second party -workman is entitled for reinstatement in his job. Accordingly, issue No.i is answered.

11. Issue No. (ii) :— In view of such facts and circumstances the second party- workman is liable to get the job. As there is no clear evidence nor any document filed by the second party workman, no order can be passed regarding the claim of back wages. Accordingly issue No. ii is answered. Hence the following award :

AWARD

The reference is answered on contest but without any cost. The termination of service of Shri Sunil Kumar Mahakud Hydra Operator with effect from 29-6-2008 by the management of M/s Aryan Ispat & Power Pvt., Ltd. Bomalo, P.O. Lapanga, Dist. Sambalpur by way of refusal of employment is illegal and unjustified. Hence the management is directed to reinstate the second party workman in his job within two months from the date of publication of the award in the *Orissa Gazette*.

Dictated and corrected by me.

S. MAHAPATRA

24-2-2011

Presiding Officer

Labour Court

Sambalpur

S. MAHAPATRA

24-2-2011

Presiding Officer

Labour Court

Sambalpur

By order of the Governor

P. K. PANDA

Under-Secretary to Government